

## EXHIBIT 8

# STATE COURT FIRST AMENDED CLASS ACTION COMPLAINT

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**FILED**  
Superior Court of California  
County of Los Angeles

11/15/2024

David W. Slayton, Executive Officer / Clerk of Court

By: N. Osallo Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

JESSE CANTU, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

GENERAL MILLS, INC., a Delaware company,

Defendant.

Case No. 24STCV21212  
Judge: Theresa M. Traber

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

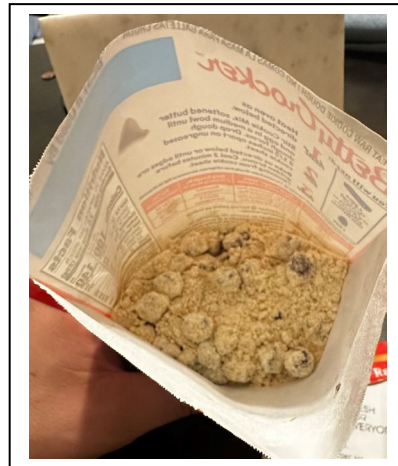
Complaint Filed: August 20, 2024  
Trial Date: None Set

## I. INTRODUCTION

1. Defendant General Mills, Inc. (“Defendant”) sells chocolate chip cookie mix (“the Product”). To increase profits at the expense of consumers and fair competition, Defendant deceptively sells the Product in oversized packaging that does not reasonably inform consumers that they are mostly buying air. In short, Defendant dupes consumers into paying extra for empty space.

2. Several state and federal courts have found that cases involving materially identical claims are actionable and meritorious. *See, e.g., Reyes v. Just Born, Inc.*, - F. Supp. 3d -, 2024 WL 1748629 (C.D. Cal. Apr. 8, 2024) (Vera, J.); *Coleman v. Mondelez Int’l Inc.*, Case No. 2:20-cv-08100 (C.D. Cal. July 26, 2021); and *Thomas v. Nestle USA, Inc.*, Cal. Sup. Case No. BC649863 (April 29, 2020).

3. The below pictures illustrate the deceptive nature of the packaging and the substantial non-functional slack fill inside the package. In summary, actual product occupies only a fraction of the exterior space represented by the package:



## II. PARTIES

4. Plaintiff Jesse Cantu (“Plaintiff”) is a resident of California. Within the statute of limitations period, Plaintiff purchased the Product for personal use. In making the purchase, Plaintiff relied upon the opaque packaging, including the size of the package and product label, and that was designed to encourage consumers like Plaintiff to purchase the Product. Plaintiff understood the size of the package and product label to indicate that the amount of product contained therein was commensurate with the size of the package, and would not have purchased the Product, or would not have paid a price premium for the Product, had Plaintiff known that the size of the package and product label were false and misleading. Plaintiff intends to purchase the Product in the future but cannot reasonably do so without an injunctive relief order from the Court ensuring Defendant’s packaging, labeling, and filling of the Product is accurate and lawful, at which point Plaintiff will reasonably be able to rely upon Defendant’s representations about the Product.

5. Defendant advertises and/or sells the Product through its agents and many retailers to consumers nationwide, including in California. Defendant has substantial contacts with and receives substantial benefits and income from and through the State of California.

## III. JURISDICTION AND VENUE

6. As a court of general jurisdiction, this Court has jurisdiction over all claims presented to it.

7. Defendant is subject to jurisdiction under California’s “long-arm” statute found at California Code of Civil Procedure § 410.10 because the exercise of jurisdiction over Defendant is not “inconsistent with the Constitution of this state or the United States.” Plaintiff purchased the Product in Los Angeles County, California and as such, venue is proper in this County.

## IV. FACTUAL BACKGROUND

8. While the amount of product inside any product packaging is material to any reasonable consumer seeking to purchase that product, over 60% of consumers report that they have been misled by food packaging and labeling.<sup>1</sup> The average consumer spends only 13 seconds deciding whether to

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<sup>1</sup> <https://www.shorr.com/resources/blog/2020-food-packaging-consumer-behavior-report/#:~:text=In%20fact%2C%2066%25%20of%20respondents,and%20food%20packaging%20moving%20forward> (last visited November 2024).

1 make an in-store purchase;<sup>2</sup> this decision is heavily dependent on a product's packaging, including the  
2 package dimensions. Research has demonstrated that packages that seem larger are more likely to be  
3 purchased because consumers expect package size to accurately represent the quantity of the good  
4 being purchased.<sup>3</sup>

5 9. Defendant chose a certain size package for its Product to convey to consumers that they  
6 are receiving an amount of product commensurate with the size of the package.

7 10. Slack-fill is the difference between the actual capacity of a package and the volume of  
8 product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less  
9 than its capacity for illegitimate or unlawful reasons.

10 11. Defendant falsely represents the quantity of product in each of the Product's opaque  
11 package. The size of each package leads reasonable consumers to believe they are purchasing a  
12 package full of product when, in reality, consumers are actually receiving significantly less than what  
13 is represented by the size of the package.

14 12. Even if consumers had a reasonable opportunity to review, prior to the point of sale,  
15 other representations of quantity, such as net weight or serving disclosures, they did not and would not  
16 have reasonably understood or expected such representations to translate to a quantity product  
17 meaningfully different from the size of the package. Low income consumers, like Plaintiff, are most  
18 likely to be misled by slack fill misrepresentations.<sup>4</sup>

19 13. Prior to the point of sale, the Product's packaging does not allow for confirmation of  
20 the contents of the Product. The Product's opaque packaging prevents a consumer from observing the  
21 contents before opening. Even if a reasonable consumer were to "shake" or otherwise inspect the  
22 package before opening it, the reasonable consumer would not be able to discern the presence of any  
23 nonfunctional slack-fill, let alone the significant amount of nonfunctional slack-fill that is present in  
24 the package.

25 <sup>2</sup> Randall Beard, *Make the Most of Your Brand's 20-Second Window*, NIELSEN, Jan. 13, 2015,  
26 <https://www.nielsen.com/insights/2015/make-the-most-of-your-brands-20-second-window/> (last  
visited November 2024).

27 <sup>3</sup> P. Raghubir & A. Krishna, *Vital Dimensions in Volume Perception: Can the Eye Fool the Stomach?*,  
36 J. MARKETING RESEARCH 313-326 (1999).

28 <sup>4</sup> <https://www.canr.msu.edu/news/americans-pay-attention-to-food-labels-but-are-confused-by-what-information-matters> (last accessed November 2024).

1           14. The other information that Defendant provides about the quantity of product on the  
2 front and back labels of the Product does not enable reasonable consumers to form any meaningful  
3 understanding about how to gauge the quantity of contents of the Product as compared to the size of  
4 the package itself. For instance, the front of the Product's packaging does not have any labels that  
5 would provide Plaintiff with any meaningful insight as to the amount of product to be expected, such  
6 as a fill line.

7           15. Disclosures of net weight and serving sizes in ounces, pounds, or grams do not allow  
8 the reasonable consumer to make any meaningful conclusions about the quantity of product contained  
9 in the Products' packages that would be different from their expectation that the quantity of product is  
10 commensurate with the size of the package.

11           16. Plaintiff had dual motivations for purchasing the product. First, Plaintiff is a consumer  
12 rights "tester" who creates public benefit by ensuring that companies comply with their obligations  
13 under California law. Second, Plaintiff was genuinely interested in consuming and enjoying the  
14 product, and did so – with disappointment that the package was mostly empty.

15           17. Plaintiff's status as a dual motivation tester is both necessary and appropriate. First, it  
16 is "necessary and desirable for committed individuals to bring serial litigation" to enforce and advance  
17 consumer protection statutes. *See Langer v. Kiser*, 57 F.4th 1085, 1097 (9th Cir. 2023). Second,  
18 nearly all consumers have dual motives, as there are usually multiple reasons behind their purchasing  
19 decisions. *See Cordes v. Boulder Brands USA, Inc.*, 2018 WL 6714323, at \*3 (C.D. Cal. 2018).

20           18. To be clear, Plaintiff would not have purchased the Product had plaintiff known that the  
21 Product contained slack-fill that serves no functional or lawful purpose, and would have consumed the  
22 entirety of the contents if the package was filled to plaintiff's expectations.

23                   **None of the Slack-Fill Statutory Exceptions Apply to the Product**

24           19. Under applicable state law, any opaque food package is considered to be filled as to be  
25 misleading if it contains nonfunctional slack-fill. Nonfunctional slack-fill is empty space within  
26 packaging that is filled to less than its capacity for reasons other than provided for in the enumerated  
27 slack fill exceptions.

1           20.     The slack-fill in the Product's packages does not protect the contents of the packages.  
2 In fact, empty space does not protect the Product.

3           21.     The machines used to package the Products would not be affected if there was more  
4 product added. At most, a simple recalibration of the machines would be required. Upon information  
5 and belief, adjusting these machines is rather simple.

6           22.     Because the packages are filled to less than half of their capacity, Defendant can  
7 increase the Product's fill level significantly without affecting how the packages are sealed, or it can  
8 disclose the fill-level on the outside labeling to inform consumers of the amount of product actually in  
9 the package, consistent with the law.

10          23.     The slack-fill present in the Product's packages is not a result of the product settling  
11 during shipping and handling. Given the Product's density, shape, and composition, any settling  
12 occurs immediately at the point of fill. No measurable product settling occurs during subsequent  
13 shipping and handling.

14          24.     The packages do not perform a specific function that necessitates the slack-fill. This  
15 safe harbor would only apply if a specific function were "inherent to the nature of the food and []  
16 clearly communicated to consumers." The packages do not perform a function that is inherent to the  
17 nature of the food. Defendant did not communicate a specific function to consumers, making this  
18 provision inapplicable.

19          25.     The Product's packaging is not reusable or of any significant value to the Product  
20 independent of its function to hold the product. The packages are intended to be discarded immediately  
21 after the product is used.

22          26.     The slack-fill present in the packages does not accommodate required labeling,  
23 discourage pilfering, facilitate handling, or prevent tampering.

24          27.     Defendant can easily increase the quantity of product in each package (or, alternatively,  
25 decrease the size of the packages) significantly.

26          28.     Because none of the safe harbor provisions apply to the Product's packaging, the  
27 packages contain nonfunctional slack-fill and are, therefore, misleading as a matter of law.  
28

29. Defendant's false, deceptive, and misleading label statements are unlawful under state consumer protection and packaging laws.

30. Defendant's misleading and deceptive practices proximately caused harm to Plaintiff by causing Plaintiff to spend more money than Plaintiff would have otherwise spent had Plaintiff known the extent of the Product's non-functional slack-fill.

#### V. CLASS ACTION ALLEGATIONS

31. Plaintiff brings this action on her own behalf and on behalf of all other persons similarly situated. The Class which Plaintiff seeks to represent comprises:

**All persons who purchased the Product in California for personal use during the four years prior to the filing of this Complaint to the present (the "Class").**

32. The Class is comprised of at least 50 persons. The Class is so numerous that joinder of all members is impracticable and the disposition of their claims in a class action will benefit the parties and the Court.

33. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common questions of law and fact include, but are not limited to, the following:

- a. The true nature and amount of product contained in each Product's packaging;
- b. Whether the marketing, advertising, packaging, labeling, and other promotional materials for the Product are deceptive;
- c. Whether Defendant misrepresented that the Product's packaging complied with California slack-fill regulations and statutes;
- d. Whether Defendant made false and misleading representations in its advertising and labeling of the Product;
- e. Whether Defendant knew or should have known that the misrepresentations were false;
- f. Whether Plaintiff and the Class paid more money for the Product than they actually received; and
- g. How much more money Plaintiff and the Class paid for the Product than they actually received.



1           34. Plaintiff's claims are typical of the claims of the proposed Class, as the representations  
2 and omissions made by Defendant are uniform and consistent and are contained on packaging and  
3 labeling that was seen and relied on by Plaintiff and members of the Class.

4           35. Plaintiff will fairly and adequately represent and protect the interests of the proposed  
5 Class. Plaintiff has retained competent and experienced counsel in class action and other complex  
6 litigation.

7           36. Plaintiff and the Class have suffered injury in fact and have lost money as a result of  
8 Defendant's false, deceptive, and misleading representations.

9           37. The Class is identifiable and readily ascertainable. Notice can be provided to such  
10 purchasers using techniques and a form of notice similar to those customarily used in class actions and  
11 by Internet publication, radio, newspapers, and magazines.

12           38. A class action is superior to other available methods for fair and efficient adjudication  
13 of this controversy. The expense and burden of individual litigation would make it impracticable or  
14 impossible for the Class to prosecute their claims individually. The trial and the litigation of Plaintiff's  
15 claims are manageable. Individual litigation of the legal and factual issues raised by Defendant's  
16 conduct would increase delay and expense to all parties and the court system. The class action device  
17 presents far fewer management difficulties and provides the benefits of a single, uniform adjudication,  
18 economies of scale, and comprehensive supervision by a single court.

19           39. Defendant has acted on grounds generally applicable to the entire Class, thereby  
20 making final injunctive relief and/or corresponding declaratory relief appropriate with respect to the  
21 Class as a whole. The prosecution of separate actions by individual Class members would create the  
22 risk of inconsistent or varying adjudications with respect to individual members of the Class that  
23 would establish incompatible standards of conduct for Defendant.

24           40. Absent a class action, Defendant will likely retain the benefits of its wrongdoing.  
25 Because of the small size of the individual Class members' claims, few, if any, Class members could  
26 afford to seek legal redress for the wrongs complained of herein. Absent a representative action, the  
27 Class members will continue to suffer losses and Defendant will be allowed to continue these  
28 violations of law and to retain the proceeds of its ill-gotten gains.

41. The amount in controversy, inclusive of all damages, costs, and fees, is believed to be approximately \$3 million. The exact amount can be ascertained by reference to Defendant's books and records.

## **VI. CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

#### **COMMON LAW FRAUD**

42. The elements of cause of action for California common law fraud are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or "scienter"); (c) intent to induce reliance; (d) justifiable reliance; and (e) resulting damage. *See Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.)

43. Each element of the cause of action for fraud is present here, as shown by the following "Who, What, When, Where, and Why" summary:

- a. **Who:** The false representations were made by the Defendant and the individuals employed by Defendant who make packaging and labeling decisions.
- b. **What:** The false representation was the representation that the package was full of product, and the specific concealment was that the package was over half empty.
- c. **When:** The misrepresentation has been made continuously through the statute of limitations period, as it is made each time a package is sold – including when Plaintiff purchased the product in the six months prior to filing this Complaint.
- d. **Where:** The misrepresentation was made on Defendant's website, marketing materials, and the packaging of the product.
- e. **Why:** Defendant made the misrepresentation to induce consumers to purchase the product, to cause them to pay more for the product, and to take market share and profits from its competitors.

44. **Knowledge:** Defendant knows that the packaging is more than half empty, knows that consumers will purchase the product based upon the belief that it is full, and knows that it is deceiving consumers.

1           45.     **Intent to defraud:** Defendant intends for consumers to purchase the product under the  
2 mistaken belief that the package is full so that Defendant can capture sales it would not have otherwise  
3 received and can increase profits.

4           46.     **Justifiable reliance:** Plaintiff's reliance on the size of the package was reasonable, as  
5 consumers reasonably expect that a package will be filled commensurate with its size.

6           47.     **Resulting damage:** Plaintiff was damaged by paying more for a product than Plaintiff  
7 would have paid and receiving less product than Plaintiff expected to receive. To be clear, Plaintiff  
8 changed position in reliance upon the fraud (by purchasing the product) and was damaged by that  
9 change of position (by receiving less than Plaintiff paid for and reasonably expected to receive).

10                             **SECOND CAUSE OF ACTION**

11                             **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**

12                             **CALIFORNIA CIVIL CODE § 1750, *et seq.***

13           48.     The CLRA prohibits certain “unfair methods of competition and unfair or deceptive  
14 acts or practices” in connection with the sale of goods.

15           49.     The practices described herein, specifically Defendant's packaging, advertising, and  
16 sale of the Product, were intended to result and did result in the sale of the Product to the consuming  
17 public and violated and continue to violate sections 1770(a)(2), 1770(a)(5), 1770(a)(7), and 1770(a)(9)  
18 of the CLRA by: (1) misrepresenting the approval of the Product as compliant with 21 C.F.R. §  
19 100.100 and the Sherman Law; (2) representing the Product has characteristics and quantities that it  
20 does not have; (3) advertising and packaging the Product with intent not to sell it as advertised and  
21 packaged; and (4) representing that the Product has been supplied in accordance with a previous  
22 representation as to the quantity of product contained within each package, when it has not.

23           50.     Defendant deceived Plaintiff by representing that the Product's packaging, which  
24 includes significant nonfunctional slack-fill, actually conforms to federal and California slack-fill  
25 regulations and statutes including the Sherman Law and 21 C.F.R. § 100.100.

26           51.     Defendant packaged the Product in packages that contain significant nonfunctional  
27 slack-fill and made material misrepresentations to deceive Plaintiff and all consumers.  
28

52. Defendant deceived Plaintiff by misrepresenting the Product as having characteristics and quantities that it does not have, e.g., that the Product is free of nonfunctional slack-fill when it is not. In doing so, Defendant intentionally misrepresented and concealed material facts from Plaintiff. Said misrepresentations and concealment were done with the intention of deceiving Plaintiff and depriving Plaintiff of rights and money.

53. Defendant knew that the Product's packaging was misleading and deceptive.

54. Defendant's packaging of the Product was a material factor in Plaintiff's decisions to purchase the Product. Based on Defendant's packaging of the Product, Plaintiff reasonably believed that Plaintiff would receive more product than actually received. Had Plaintiff known the truth of the matter, Plaintiff would have not have purchased the Product.

55. Plaintiff has suffered injury in fact and have lost money as a result of Defendant's unfair and unlawful conduct. Specifically, Plaintiff paid for product never received.

56. More than 30 days prior to filing this Complaint, Plaintiff notified Defendant of the particular alleged violations of Section 1770 and demanded that Defendant correct, repair, replace, or otherwise rectify the violation. Defendant has not fully complied with Plaintiff's request.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment and relief on all causes of action as follows:

- A. An order certifying the class, appointing plaintiff's counsel as class counsel, and making other appropriate class management orders;
- B. An order requiring Defendant to add a conspicuous "fill line" to the front of the Product's packaging sold in California;
- C. Actual, statutory, and punitive damages;
- D. Attorneys' fees and costs; and
- E. All other relief at law or in equity that may be just and proper.

Dated: November 15, 2024

PACIFIC TRIAL ATTORNEYS, APC

By: 

Scott. J. Ferrell  
Attorneys for Plaintiff

**PROOF OF SERVICE**  
**STATE OF CALIFORNIA, COUNTY OF ORANGE**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 4100 Newport Place Drive, Suite 800, Newport Beach, CA 92660.

On November 15, 2024, I served the foregoing document described as **FIRST AMENDED CLASS ACTION COMPLAINT** on the following person(s) in the manner indicated:

**SEE ATTACHED SERVICE LIST**

☐ (BY MAIL) I am familiar with the practice of Pacific Trial Attorneys for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope, with postage fully prepaid, addressed as set forth herein, and such envelope was placed for collection and mailing at Pacific Trial Attorneys, Newport Beach, California, following ordinary business practices.

☐ (BY OVERNIGHT FEDERAL EXPRESS) I am familiar with the practice of Pacific Trial Attorneys for collection and processing of correspondence for delivery by overnight courier. Correspondence so collected and processed is deposited in a box or other facility regularly maintained by Federal Express that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope designated by Federal Express with delivery fees paid or provided for, addressed as set forth herein, and such envelope was placed for delivery by Federal Express at Pacific Trial Attorneys, Newport Beach, California, following ordinary business practices.

☐ (BY HAND DELIVERY) I am familiar with the practice of Pacific Trial Attorneys for collection and processing of correspondence for hand delivery by courier. I caused such document to be delivered by hand to the addressee(s) designated.

☐ (BY ELECTRONIC SERVICE) I am causing the document(s) to be served by email from the electronic notification address of [@pacifictrialattorneys.com](mailto:@pacifictrialattorneys.com) the document described above on the date shown below to the email addresses of the persons listed in the attached service list.

☒ (BY ELECTRONIC SERVICE via USA Legal) I am electronically serving the document described above and a copy of this declaration to the person, on the date shown below, to the email addresses of the persons listed in the attached service list. I am readily familiar with the business' practice for filing electronically, and that the document would be electronically served the same day in the ordinary course of business following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 15, 2024, at Newport Beach, California.

  
\_\_\_\_\_  
Melojean Greenfield

**SERVICE LIST**

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